INDEX TO APPENDICES

Page

Appendix A

Judgment, June 7, 1961 ..... 1a

Order, June 28, 1961 ..... 2a

Appendix B

Order, June 13, 1963 ..... 3a

Court Memorandum 3a

Appendix C

28 USCA, Federal Rules of Civil Procedure,

Rule 60(b) 6a

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF KENTUCKY
JACKSON

Civil Action No. 284

SUNFIRE COAL COMPANY, a corporation, and
ASHLO COAL COMPANY, a corporation,
Plaintiffs,

v.

UNITED MINE WORKERS OF AMERICA,
Defendant.

Filed June 7, 1961

Judgment

In accord with the answers of the Jury to interrogatories submitted by the Court upon the conclusion of the trial of this action,

It is the judgment of the Court that the plaintiff Sunfire Coal Company, a corporation, have and recover of the defendant, United Mine Workers of America, the sum of Two Hundred Fifty Thousand ($250,000) Dollars, and its costs herein, and

It is the further judgment of the Court that the plaintiff, Ashlo Coal Company, a corporation, have and recover of the defendant, United Mine Workers of America, the sum of Fourteen Thousand ($14,000) Dollars, and its costs herein.

This 7th day of June, 1961.

H. CHURCH FORD, *Judge*

Order, June 28, 1961

Order

Filed June 28, 1961

Pursuant to a previous assignment, the motion of the defendant for a judgment, or in the alternative for a new trial, having been brought on for hearing on Friday, June 23, 1961, and the Court having heard the argument of counsel for the parties, and having considered said motions, and being advised

IT IS ORDERED that the defendant's motion for judgment, and its alternative motion for a new trial, both be, and the same are denied.

This 27th day of June, 1961.

H. CHURCH FORD, *Judge*

NOTE: **The foregoing judgment and order appear in the Record of *Sunfire Coal Company, a corporation and Ashlo Coal Company, a corporation, Plaintiffs v. United Mine Workers of America, Defendant*, Civil Action 284 in the United States District Court for the Eastern District of Kentucky—Jackson, and docketed in the United States Court of Appeals for the Sixth Circuit as Case No. 14,832, styled *Sunfire Coal Company, a corporation and Ashlo Coal Company, a corporation, Plaintiffs-Appellees v. United Mine Workers of America, Defendant-Appellant*. The judgment and order above appear in the Appendix filed by Appellant, United Mine Workers of America, at pages 12a and 17a, respectively.**

APPENDIX B

Filed June 13, 1963

Order

The motion of the defendant to vacate final judgment and order and award defendant United Mine Workers of America a new trial because of newly discovered evidence in each of the above styled cases is overruled.

See Memorandum.

/s/ Mac Swinford
Mac Swinford
Chief Judge, U. S. District Court

/s/ H. Church Ford
H. Church Ford
Senior District Judge.
Serving by Designation

Filed June 13, 1963

Memorandum

The plaintiffs brought this action to recover for damages inflicted on their property through the wrongful conduct of certain employees and agents of the United Mine Workers of America (hereinafter UMW) in the course of the coal strike in the spring of 1959. The court entered judgment for the plaintiffs on October 10, 1961 and on November 30, 1961, overruled motions by the defendant for judgment or, in the alternative, for a new trial. On April 22, 1963, defendant filed a motion in this court to vacate the judgment and for a new trial based on newly discovered evidence.

Attached to the motion is an affidavit by a police officer from Hazard, Kentucky to the effect that certain acts of violence supposed to have been perpetrated by UMW agents were actually committed by persons having no connection with the UMW. The defendant maintains that such evidence would compel findings different from those already

made because the court has relied upon circumstantial evidence to connect the damage to the plaintiffs' property and the conduct of the defendant's agents, not upon specific identification of the wrongdoers.

Defendant cites Rule 60(b)(6), F.R.C.P. as the basis for its motion. Rule 60(b) provides that a court may relieve a party from the operation of a final judgment in five enumerated situations, one of which entails newly discovered evidence, and under a sixth subdivision which is a broadly worded catchall to cover situations not embraced in the preceding five subdivisions. The present question stems from the fact that the rule prescribes a one-year time limit for opening a judgment for newly discovered evidence, while there is no definite time limit on the sixth subdivision, the one on which defendant relies.

The court has examined the authorities submitted by both sides and is convinced that the defendant's motion comes too late to claims relief under Rule 60(b). Under the most liberal view, it can be characterized as no more than a motion for relief on the ground of newly discovered evidence. That the evidence is highly pertinent and that it would have a decisive effect on the final judgment are matters that must be taken for granted as to all such motions. The sixth subdivision of Rule 60(b) is by its very language limited to apply only to situations not covered by any of the other subdivisions and has been so construed by numerous court opinions. *Klapprott v. United States*, 335 U.S. 601 (1949); *Federal Deposit Insurance Corp. v. Alker*, 3d Cir., 234 F2d 113 (1956); *United States v. Karahalias*, 2d Cir., 205 F2d 331 (1953); *Federal Deposit Insurance Corp. v. Alker*, E.D. Penn., 30 F.R.D. 527 (1962); *Davis v. Wadsworth Construction Co.*, E.D. Penn., 27 F.R.D. 1 (1961).

In the case of Sunfire Coal Company, et al v. United Mine Workers of America, No. 284 on the docket at Jackson, Ky., a motion similar to that referred to in the above Memorandum is now pending. For the reasons set out in the above Memorandum, the motion should be overruled. An Order

overruling the motion in each of these cases is this day entered.

/s/ Mac Swinford
Mac Swinford
Chief Judge, U. S. District Court

/s/ H. Church Ford
H. Church Ford
Senior District Judge
Serving by Designation

NOTE: **The foregoing Memorandum was entered in both the instant case *Sunfire Coal Co. et al v. UMWA, No. 284*, and *also in R. P. Price et al d/b/a Elkhorn Coal Co. v. UMWA, Case No. 559* in the U.S District Court for the Eastern District of Kentucky (Pikeville), which is currently pending on appeal in the U.S. Court of Appeals, Sixth Circuit as Case No. 15,503.**

The Memorandum's first paragraph relates to judgments entered in the *Price et al case*, but it is made applicable to the instant *Sunfire* case in the concluding paragraph.

APPENDIX C

28 USCA. Federal Rules of Civil Procedure:

Rule 60. RELIEF FROM JUDGMENT OR ORDER

* * * *

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., § 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.